

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

THETIUS WESTFIELD
10726 Dupont Ave.
Cleveland, Ohio 44108,

Plaintiff,

v.

BUDZIK & DYNIA, LLC
c/o Statutory Agent, Alfred S. Dynia
4849 North Milwaukee Avenue, Suite 801
Chicago, Illinois 60630,

Defendant.

)
) Case No: 1:12-cv-807
)
) JURY DEMAND REQUESTED
)
) **CIVIL COMPLAINT**
) **(Unlawful Debt Collection Practices)**

COMPLAINT

THETIUS WESTFIELD (Plaintiff), by her attorneys, KAHN AND ASSOCIATES, L.L.C., alleges the following against BUDZIK & DYNIA, LLC. (Defendant):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, *15 U.S.C. 1692 et seq.* (FDCPA).

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to *15 U.S.C. 1692k(d)*, which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy," and *28 U.S.C. 1367* grants this court supplemental jurisdiction over the state claims contained therein.
3. Because Defendant conducts business in Ohio, personal jurisdiction is established.
4. Venue is proper pursuant to *28 U.S.C. 1391(b)(2)*.

PARTIES

5. Plaintiff is a natural person who resides in Cleveland, Cuyahoga County, Ohio and is allegedly obligated to pay a debt, and Plaintiff is a “consumer” as that term is defined by *15 U.S.C. 1692a(3)*.
6. Pursuant to the definitions outlined in *15 U.S.C. 1692a(1-6)*, Defendant is a debt collector and sought to collect a consumer debt from Plaintiff which was allegedly due and owing from Plaintiff, and Plaintiff is a consumer debtor.
7. Defendant is an Illinois business entity and a debt collector with an office in Chicago, Illinois.
8. Defendant uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, and/or regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is a "debt collector" as that term is defined by *15 U.S.C. § 1692a(6)*.
9. Defendant is a collection agency that in the ordinary course of business, regularly, on behalf of itself or others, engages in debt collection.

FACTUAL ALLEGATIONS

10. Defendant has telephoned Plaintiff 2-3 times a day since mid-October 2011 from phone number 866.753.7316 to Plaintiff's number, 216.249.3220, seeking payment from Plaintiff on an alleged consumer debt for an outstanding balance on a Discovery credit card account.
11. Defendant has continued to place daily calls despite Plaintiff advising Defendant that she is elderly and without sufficient funds or income to make any payment,

and despite Plaintiff's requests that Defendant cease further calls or contact with her regarding the alleged repayment obligation.

12. Despite Plaintiff's notices above, Defendant has also threatened to promptly file a civil lawsuit in court in the event Plaintiff refused to immediately resolve the alleged debt or make other suitable payment arrangements. Defendant in fact specifically remarked that it was planning its legal action in an effort to coerce Plaintiff into making immediate payment or payment arrangements.

13. To Plaintiff's knowledge, Defendant never made its threatened civil filing against her, and Defendant's calls and contacts, especially after being advised of Plaintiff's age and inability to pay, were done with the intent to harass and annoy Plaintiff as the call recipient.

COUNT I
DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

14. Defendant violated the FDCPA based on the following:

- a. Defendant violated §1692d of the FDCPA by engaging in conduct the natural consequence of which is to harass, oppress, or abuse the Plaintiff in connection with the collection of a debt.
- b. Defendant violated §1692d(5) of the FDCPA by causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.
- c. Defendant violated §1692e(5) by threatening to take any action that cannot be legally taken or is not intended to be taken.
- d. Defendant violated §1692e(2)(A) by the false representation of the

character, amount, or legal status of a debt.

WHEREFORE, Plaintiff, THETIUS WESTFIELD respectfully requests judgment be entered against Defendant, BUDZIK & DYNIA, LLC, for the following:

15. Statutory damages of \$1000.00 pursuant to the Fair Debt Collection Practices Act, *15 U.S.C. 1692k*,

16. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, *15 U.S.C. 1692k*

17. Any other relief that this Honorable Court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiff, THETIUS WESTFIELD, requests a jury trial in this case.

Respectfully submitted,

KAHN & ASSOCIATES, LLC

/s/ David W. Skall

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